

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1991

REMEDIES

(Friday, August 16, 1991)

Instructions to Students

- a) Time: 3 1/2 hours
- b) Answer FIVE questions only
- c) In answering any question a candidate may reply by reference to the Law of any Commonwealth Caribbean Territory, but must state at the beginning of the answer the name of the relevant territory.
- d) It is unnecessary to transcribe the questions you attempt.
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QUESTION 1

Robert was the owner of a three-storey building in the city. He carried on a grocery business on the ground floor. The first floor was tenanted by Sam at a monthly rent of \$2,000. Robert resided with his family on the top floor.

In March 1988, a lorry owned and driven by Ben ran into the building causing extensive damage thereto. Ben accepted liability and promised to repair the building within two weeks. The cost of repair was then \$20,000. Ben did not keep his promise. In fact in May 1988, he denied liability. Due to financial difficulties, Robert was unable to effect the repairs.

In June 1988, Robert and Sam were forced to evacuate the building because of the collapse of one of the supporting columns which was badly damaged in the accident. Robert secured alternative accommodation at a monthly rental of \$1,000.

In the meantime, Robert, unable to carry on his business boarded up the ground floor. A few days later thieves broke into the premises and took away most of the stock from the grocery.

In September 1988, after the collapse of another supporting column the building was demolished by the local authority, on ground of safety.

Two weeks ago Robert obtained judgment against Ben. The assessment of damages is set for the 25th day of September, 1991. Advise Robert on the measure of damages.

QUESTION 2

On July 1, 1990, Harry then aged 45 was killed in an accident for which he was partially to blame. At the time of his death he was a travelling salesman earning approximately \$4,000 per month in commission. He was survived by his wife Jenny, aged 40, a severely mentally and physically handicapped son, Sean aged 10 who requires constant supervision and a daughter Kate, aged 17 who has just successfully completed her advanced level examinations. Harry was also survived by another son John, aged 6, the product of an extra-marital affair with Nora. But apart from the occasional gift at Christmas and on John's birthday, Harry did not support John financially.

You are consulted by Jenny who has just obtained letters of administration of Harry's estate, which costs her \$5,000. She also spent \$6,000 for funeral expenses.

Advise Jenny on the measure of damages consequent upon Harry's death.

QUESTION 3

Your client, Restorers Ltd., specializes in the acquisition and restoration of old houses for resale. Steve and Andy are brothers and the joint owners of a house in the city. Andy who takes a keen interest in the preservation of old buildings has publicly vowed to devote his life to restoring the house. Steve, a businessman, who is in urgent need of cash decides to sell the house hoping that he can persuade Andy to join in the sale.

By a contract in writing made on January 1, 1990, Steve agreed to sell the house to your client for \$200,000 and completion is fixed for March 31, 1990. They paid \$2,000 to their attorney-at-law to cover the cost of preparing the contract and investigating title. Shortly after the contract Steve tried to persuade Andy to join in the sale but he refused. Steve used his best endeavours to convince his brother to join in the sale but Andy was adamant that he would not sell.

On April 1, 1990, by which time the value of the house had risen to \$250,000 your client repudiates the contract and issues a writ claiming damages. They tell you that in January 1990, they entered into a contract to sell the house after restoration and would have made a clear profit of \$100,000.

Advise Restorers Ltd. as to the measure of damages.

QUESTION 4

(a) Road Pavers Ltd. entered into a contract with Nonesuch City Council to construct an extension to High Street at a cost of \$10million. The contract provided inter alia that should the contractor fail to complete the works by the date specified or if there was any defect in the construction the Council shall be entitled to the sum of \$6m by way of liquidated damages. The works were not completed by the date specified as the contractor failed to pave a portion of the road measuring ten square feet. The Council now claims \$6million.

Advise Road Pavers Ltd.

(b) Neal, a medical practitioner in private practice, lived some distance away from his surgery. He also made house calls on several patients who were unable to attend his surgery. It was his practice to change his car every three years because he needed a reliable form of transport.

On November 1, 1989 Neal's car then 2 years and 9 months old was involved in an accident for which Brian was solely to blame. The car was a total wreck. Its pre-accident value was \$30,000 and the value of the wreck was assessed at \$2,000.

Sometime prior to the accident Neal had ordered a new car of the same type and delivery was promised for January 1990. After the accident he hired a replacement which he used until the new car was delivered on March 30, 1990. The new car was delivered late because of a dock strike.

Neal has instructed legal proceedings against Brian and seeks your advice on the measure of damages.

Advise him.

QUESTION 5

Patrick, a widower living alone, employed Joyce as his housekeeper. In January 1989, Patrick dismissed Joyce who took the following items from his home -

- (i) share certificates for 2000 shares in AB Ltd. valued at \$10,000 together with a share transfer form signed in blank by Patrick;
- (ii) an antique chair valued at \$2,000 which had been in

Patrick's family for generations;

- (iii) a desk-top computer valued at \$5,000 the property of Patrick's grandson, Leo, who is at university abroad.

Joyce had the shares transferred into her name. In March 1990, the value of the shares rose to \$15,000 but are now worth only \$5,000. The computer which was in need of repairs was repaired at a cost of \$500 by Joyce who sold it for \$6,000. Joyce has refused to return the shares and the chair.

Advise Patrick as to the appropriate remedy and the likely measure of damages in the event of legal proceedings against Joyce.

QUESTION 6

In 1990, William then aged 36 was employed as a civil engineer with General Contractors Ltd. at a monthly salary of \$10,000.

On May 1, 1990, William was involved in an accident for which Rufus was totally responsible. William sustained a fracture and dislocation of the spine causing swelling of the spinal cord. He also suffered fractures of the ribs on both sides. On his admission to hospital he had to wait one hour before he could be attended to. During this time he experienced severe pain. He was hospitalized for 6 months.

On his discharge from hospital William was paralysed from the waist down and was confined to a wheelchair. His wife Joan who was then earning \$3,000 per month as a secretary had to give up her job to care for him.

William was paid his salary for six months after the accident.

and from then he has been receiving \$10,000 monthly under a policy of insurance effected by him.

A recent medical report indicates that surgery may relieve the pressure on the spinal cord thus increasing mobility but there was only a fifty-fifty chance of success. In any event William refused surgery because he was afraid.

Prior to the accident William was a keen golfer having represented his country in the "Caribbean Cup". He also did odd jobs around the home and had a thriving kitchen garden. He can no longer engage in these activities.

William now wishes to institute legal proceedings against Rufus.

Advise him -

- (i) on the measure of damages;
- (ii) whether interest will be awarded on these damages.

QUESTION 7

In May 1985, Althea purchased the freehold of a two-storey building for \$100,000. She converted the ground floor into a factory and installed machinery to the value of \$100,000. On January 2, 1986, she commenced the manufacture and export of furniture earning annual profits of \$800,000. She resided on the upper floor.

On January 1, 1991, the property then valued at \$300,000 was partially destroyed by fire. The machinery was also partially

destroyed. The building in its damaged state was valued at \$200,000. Sparky, Althea's neighbour has admitted liability. Althea has been advised by her insurance claims adjuster that it would cost \$200,000 to repair the building and a further \$200,000 to import and install new machinery. It is estimated that rebuilding work would last for six months and it would be a further six months before the new machinery is imported and installed.

You are consulted by Althea who is anxious to restart her business. She tells you that since the fire she was forced to vacate the upper floor and is now renting an apartment at \$600 per month. She seeks your advice on the likely measure of damages in an action against Sparky.

Advise her.

QUESTION 8

Homesites Ltd. carries on the business of property developers. Charles is the owner of a parcel of land situated in an area for development. By an agreement in writing dated July 1, 1989, Charles agreed to sell the land to Homesites Ltd. for \$100,000. The agreement provided that Charles would assist the purchasers in an application to the relevant authority for permission to subdivide the land into 8 lots. Homesites Ltd. in the meantime entered into agreements with potential home-owners to sell the lots to them at \$50,000 each.

At the time of the agreement Homesites Ltd. made a deposit of \$10,000 on the purchase price. They also paid \$2,000 to their

attorneys-at-law for the preparation of the agreement and the cost of investigating title.

Shortly after the agreement Homesites Ltd. discovered that the land was occupied by a gardener but on inquiry were told by Charles that the gardener was a mere licensee. It subsequently transpired that the gardener enjoyed protection under Agricultural Small Holdings legislation. Charles therefore concluded that it would be almost impossible to eject him. Before the date fixed for completion Charles repudiated the agreement giving as his reason, the occupation by the gardener.

Homesites Ltd. have issued a writ claiming damages from Charles. They seek your advice as to the measure of damages.

Advise them.
